

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**





# 77-1104

To be argued by  
THOMAS P. SMITH

---

---

**United States Court of Appeals**  
**FOR THE SECOND CIRCUIT**

Docket No. 77-1104

---

UNITED STATES OF AMERICA,

*Appellee,*

—v.—

RONALD A. STRINGER,

*Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

---

---

**BRIEF FOR THE APPELLEE**

---

---

PETER C. DORSEY

*United States Attorney*

*District of Connecticut*

P. O. Box 1824

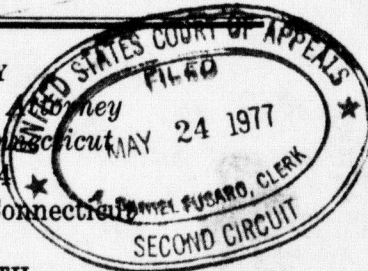
New Haven, Connecticut

THOMAS P. SMITH

*Assistant United States Attorney  
for the District of Connecticut*

---

---





## TABLE OF CONTENTS

|                                                                                                                                                                                                       | APGE |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Statement of the Case .....                                                                                                                                                                           | 1    |
| Statutes Involved .....                                                                                                                                                                               | 2    |
| Issues Presented .....                                                                                                                                                                                | 5    |
| The Facts .....                                                                                                                                                                                       | 6    |
| <b>ARGUMENT:</b>                                                                                                                                                                                      |      |
| I. The District Court Properly Admitted Into Evidence Government's Exhibit No. 2, A List Of Bait Money Which Was Stolen From The Bank .....                                                           | 16   |
| II. The District Court's Instruction On "Force, Violence, And Intimidation" Operated In The Defendant's Benefit, Was Fully Supported By The Evidence, And Did Not Constitute Reversible Error .....   | 24   |
| III. The District Court's Instruction On "Aiding And Abetting" Which Included A Reading Of The Statute And A Clear Explanation Of Its Terms, Was Proper And Did Not Constitute Reversible Error ..... | 28   |
| IV. The District Court Did Not Commit An Abuse Of Discretion In Refusing To Prohibit The Government From Using Appellant's 1971 Heroin Distribution Conviction For Impeachment Purposes .....         | 29   |
| A. The balancing test of Rule 609(a)(1) vests wide discretion in the trial court and contemplates consideration of many variables .....                                                               | 29   |



|                                                                                                                                 |    |
|---------------------------------------------------------------------------------------------------------------------------------|----|
| B. Under the circumstances of the present case the District Court cannot, and should not, be held to have abused its discretion | 32 |
| CONCLUSION .....                                                                                                                | 37 |

## TABLE OF CASES

|                                                                                                                                |        |
|--------------------------------------------------------------------------------------------------------------------------------|--------|
| <i>Brooke v. United States</i> , 385 F.2d 279, 286 (D.C. Cir. 1967) .....                                                      | 31     |
| <i>Gordon v. United States</i> , 383 F.2d 936 (D.C. Cir. 1967), cert. denied, 390 U.S. 1029 (1968) ....                        | 36     |
| <i>Toho Bussan Kaisha, Ltd. v. American President Lines, Ltd.</i> , 265 F.2d 418, 422-423 (2d Cir. 1959) .....                 | 21     |
| <i>United States v. Epps</i> , 438 F.2d 1192, 1193 (4th Cir. 1971) .....                                                       | 25     |
| <i>United States v. Hawley</i> , — F. — (2d Cir. 1977), slip op. at 3245-3246, Docket No. 76-1469 (April 27, 1977) .....       | 32, 36 |
| <i>United States v. Leroy Hayes</i> , — F.2d — (2d Cir. 1977), slip op., Docket No. 76-1508 (April 21, 1977) .....             | 32, 37 |
| <i>United States v. Housand</i> , — F.2d — (2d Cir. 1977), slip op. at 2003-2004, Docket No. 76-1156 (February 25, 1977) ..... | 35     |
| <i>United States v. Inciso</i> , 292 F.2d 374, 381 (7th Cir.), cert. denied, 368 U.S. 920 (1961) .....                         | 28     |
| <i>United States v. Jackson</i> , 405 F. Supp. 938 (E.D.N.Y. 1975) .....                                                       | 36     |
| <i>United States v. Kushner</i> , 135 F.2d 668 (2d Cir.), cert. denied, 320 U.S. 212, reh. denied, 320 U.S. 808 (1943) .....   | 23     |

|                                                                                                                       | PAGE |
|-----------------------------------------------------------------------------------------------------------------------|------|
| <i>United States v. Luck</i> , 348 F.2d 763 (D.C.Cir. 1965)                                                           | 30   |
| <i>United States v. Manton</i> , 107 F.2d 834, 844 (2d Cir. 1938)                                                     | 21   |
| <i>United States v. McCoy</i> , 539 F.2d 1050, 1064 (5th Cir. 1976)                                                   | 28   |
| <i>United States v. Miley</i> , 513 F.2d 1191, 1209 (2d Cir.), <i>cert. denied</i> , 423 U.S. 842 (1975)              | 29   |
| <i>United States v. Ortiz</i> , — F.2d — (2d Cir. 1977), <i>slip op.</i> at 2792, Docket No. 76-1460 (April 11, 1977) | 31   |
| <i>United States v. Palumbo</i> , 401 F.2d 270 (2d Cir. 1968)                                                         | 31   |
| <i>United States v. Puco</i> , 453 F.2d 539 (2d Cir. 1971)                                                            | 31   |
| <i>United States v. Reddington</i> , 433 F.2d 997 (4th Cir. 1970)                                                     | 36   |
| <i>United States v. Rivera</i> , 513 F.2d 519, 525 (2d Cir.), <i>cert. denied</i> , 423 U.S. 948 (1975)               | 23   |
| <i>United States v. Robinson</i> , 527 F.2d 1170 (6th Cir. 1975)                                                      | 25   |
| <i>Walker v. United States</i> , 342 F.2d 22, 25 (5th Cir.), <i>cert. denied</i> , 382 U.S. 859 (1965)                | 28   |

## SECONDARY AUTHORITIES

|                                                                    |        |
|--------------------------------------------------------------------|--------|
| McCormick, <i>Evidence</i> § 236 (1972 ed.)                        | 21     |
| 5 Weinstein, <i>Evidence</i> ¶¶ 1003[01], [02], [03] <i>passim</i> | 23, 24 |

## STATUTES

|                                                       | PAGE          |
|-------------------------------------------------------|---------------|
| Title 28, United States Code, section 1732(b) . . . . | 21, 22        |
| Rule 609(a), Federal Rules of Evidence . . . . .      | 29            |
| Rule 803, Federal Rules of Evidence . . . . .         | 3, 19, 20, 21 |
| Rule 1001, Federal Rules of Evidence . . . . .        | 22            |

**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

**Docket No. 77-1104**

---

UNITED STATES OF AMERICA,

*Appellee,*

—v.—

RONALD A. STRINGER,

*Appellant.*

---

**BRIEF FOR THE APPELLEE**

---

**Statement of the Case**

A Grand Jury in Hartford returned a two-count indictment on October 28, 1976, charging Ronald A. Stringer with bank robbery and conspiracy.<sup>1</sup> Named as an unindicted co-conspirator in the second count of the indictment was Christine Doolittle, the appellant's fourteen year old accomplice.<sup>2</sup> Trial commenced on January 18,

---

<sup>1</sup> Count One of the indictment charged the appellant with a violation of Title 18, United States Code, sections 2113(a) and Count Two of the indictment charged the appellant with conspiracy to rob a federally-insured bank in violation of Title 18, United States Code, section 2113(a), and with conspiracy to receive and possess the proceeds of that robbery in violation of Title 18, United States Code, section 2113(c).

<sup>2</sup> At the time of the robbery Christine Doolittle was fourteen years old. Shortly thereafter she celebrated her fifteenth birthday. At the time of appellant's trial, she had recently turned sixteen.

[Footnote continued on following page]



1977 before the Honorable T. Emmet Clarie, Chief United States District Judge, and a jury. On January 21, 1977 the jury returned a verdict of guilty on both counts. Appellant Stringer was subsequently sentenced to a term of nine years on the bank robbery count and a concurrent term of five years on the conspiracy count. It is from this judgment of conviction that the appellant Stringer, who is presently incarcerated, has appealed.

### **Statutes Involved**

Title 18, United States Code, Section 2113:

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny—

---

As a result of her prosecution by the juvenile authorities of the State of Connecticut, and the strictures of the federal juvenile delinquency act, *see* Title 18, United States Code, section 5031 *et seq.*, the government did not proceed against Christine Doolittle. There had been no disposition, or formal adjudication, of the State's charges at the time of appellant's trial.



Shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both.

\* \* \* \* \*

(c) Whoever receives, possesses, conceals, stores, barter, sells, or disposes of, any property or money or other thing of value knowing the same to have been taken from a bank, credit union, or a savings and loan association, in violation of subsection (b) of this section shall be subject to the punishment provided by said subsection (b) for the taker.

Title 18, United States Code, section 371:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Title 18, United States Code, section 2:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Title 18, United States Code, Federal Rules of Evidence, Rule 803:

(6) Records of regularly conducted activity. A memorandum, report, record, or data compila-

tion, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Title 18, United States Code, Federal Rules of Evidence,  
Rule 1008:

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

Title 18, United States Code, Federal Rules of Evidence,  
Rule 102:

These rules shall be construed to secure fairness in administration, elimination of unjustifiable

expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Title 28, United States Code, section 2111:

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

Title 28, United States Code, Federal Rules of Civil Procedure, Rule 52(a):

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

### **Issues Presented**

1. Did the District Court commit reversible error by admitting into evidence as a business record a duplicate original bait money list which was identified by the custodian of the records as having been made by a teller and maintained in the ordinary course of business?



2. Did the District Court's charge, which conjoined force and intimidation, thereby increasing the government's burden of proof and making conviction more difficult, constitute reversible error?

3. Was the District Court's charge on aiding and abetting, which consisted of a reading of Title 18, U.S.C. § 2, and a general explanation of its terms and meaning, sufficient under the circumstances of the present case?

4. Did the District Court commit an abuse of discretion in refusing to prohibit the government from using appellant's prior narcotics conviction for impeachment purposes at his bank robbery trial when it was apparent that the prior conviction was serious, fairly recent, and substantially dissimilar to the bank robber charge, and that credibility was the key issue?

### The Facts

Late on Friday afternoon, January 9, 1976, a young white female wearing a black maxi-coat and steel-rimmed glasses entered the main office of the Permanent Savings and Loan Association, a federally-insured bank in Meriden, Connecticut (Tr. 3).<sup>3</sup> Immediately upon entering the bank, she turned to Carol Dittberner, a typist-receptionist who was seated at a desk in the lobby, displayed a pistol wrapped in cloth, and announced, "This is a hold-up." Dittberner informed her that she had no money, at which point the robber quickly moved to the teller station closest to Dittberner and the front door of the bank (Tr. 33). That teller station, known as window No. 10, was staffed by Maureen Reed (Tr. 29).

---

<sup>3</sup>References marked "(Tr.       )" refer to the transcript of the four day trial in District Court.



The robber thereupon handed Reed a demand note<sup>4</sup> and a brown plastic clothing bag, which had been turned inside out in order to conceal the gold-colored printing which appeared on it (Tr. 78). She then verbally ordered Reed to fill the bag with money (Tr. 29). Ms. Reed complied with this command, taking "all the cash out of [the] drawer, including \$300 in bait money" (Tr. 29). By this time the robber's hands were trembling and her gun was pointed at Reed's neck (Tr. 29, 32). Despite the speed with which she acted, Ms. Reed was repeatedly told "to hurry up or she'd kill me." (Tr. 30). Before leaving teller window No. 10 with approximately \$4,475 in stolen money, the robber once again threatened Maureen Reed with death if she reported the robbery (Tr. 30). The robber then left on foot.

Early the following morning, Ronald Adrian Stringer and a companion, George Evans, Jr., arrived at Daniels Cadillac, a luxury car dealership located in Hartford (Tr. 186-187). Stringer informed James Pace, a car salesman, that he was in the market for a used Cadillac in the \$1,500 to \$2,000 price range (Tr. 188). Pace told Stringer that Daniels' service manager, James Carroll, happened to have just such an automobile which belonged to James Carroll's brother, William Carroll, and which was on the premises at the time (Tr. 188). After some preliminary negotiations between Stringer and James Carroll, the parties arrived at a purchase price of \$1,750. Stringer handed this amount in cash to James Carroll (Tr. 193). For the most part, the bills were in small denominations "fives, tens, twenties—maybe a few

---

<sup>4</sup> The demand note was identified at trial (Tr. 31, 70) and introduced as Government's Exhibit 4. It read as follows:

"This is a stickup. Give me all the money or I'll blow your head off. Make a move your [sic] dead. In 50\$ 10\$ 20\$ 5\$ 100\$ 1\$ [sic]"

fifties—possibly a couple of hundred dollar bills” (Tr. 175). In return Stringer received title to, and possession of, a dark green 1970 Cadillac (Tr. 231; 300).

James Carroll gave \$100 of this money to James Pace as his commission for selling the car, spent \$5 for lunch, and retained the balance of \$1,645 for his brother William. Specifically, James Carroll put an elastic band around the money and placed it in his right-hand pocket (Tr. 176). Later that day James Carroll gave this money to William Carroll (Tr. 151). Although William Carroll spent some of this money during the following week, he retained most of it and did not spend any \$20 bills (Tr. 156).

On January 16, 1976, FBI Special Agent Phillip Krumm interviewed William Carroll. Agent Krumm examined the money which Carroll retained in his possession, comparing each bill with a list of bait money which Maureen Reed had given to the robber (Tr. 32, 230). Two bills, a \$20 bill and a \$10 bill, appeared on that list (Tr. 230). Agent Krumm took custody of these bills from William Carroll, and Carroll specifically recalled having received them from his brother, James, as part of the proceeds of the sale of the car to the appellant on the morning after the robbery (Tr. 151). These bills were introduced at trial as Government's Exhibit 3.

Agent Krumm interviewed the appellant for the purpose of determining where he had obtained the money to buy the Cadillac. Stringer explained that he paid \$1,200 for the car (Tr. 217). He claimed to have received \$500 from his brother Willie *prior* to January 9th, the date of the robbery. He also claimed to have won \$722 in a crap game on January 3rd, although he could not recall the names of the other participants in the game. He claimed also to have borrowed \$100 from George Evans

for the purchase of the car. Some additional cash, he maintained, had come from his \$55 unemployment check which he cashed *prior* to January 9th (Tr. 218).

Krumm informed Stringer that he did not believe him (Tr. 218). At this juncture Stringer admitted that he had lied about the purchase price of the car (Tr. 219). Stringer then explained that he had actually paid \$1,750 for the car, and that he had borrowed at least \$350 from his friend, George Evans (Tr. 219). During his explanation Agent Krumm noticed some hesitation on Stringer's part, as though he were attempting to add figures rapidly in his head. "All of a sudden" Stringer claimed to recall having sold a stolen stereo for \$50 to a friend whom he refused to identify (Tr. 219-220).

Special Agent Krumm informed Stringer that all of the figures which he had provided still did not add up to \$1,750, plus the money needed to pay the sales tax on the Cadillac. Stringer then claimed to remember having fortuitously met an old acquaintance, whose last name he did not know, who repaid a \$116 debt on January 6, 1976 (Tr. 220-221). Thus, with the exception of the money *allegedly* borrowed from George Evans on January 10, 1976, Stringer claimed to have come into possession of all the cash prior to the bank robbery.<sup>5</sup>

Appellant Stringer further denied any knowledge concerning the robbery of the Permanent Savings and Loan

---

<sup>5</sup> Both at the trial and before the Grand Jury, George Evans testified that the cash which he loaned Ronald Stringer on January 10, 1976, had been in his possession well prior to the robbery (Tr. 334). Additionally, Evans testified that he did not loan Ronald Stringer \$350, as Stringer had told Agent Krumm. Evans testified at trial that he loaned Stringer approximately \$300, approximately \$100 of which was paid to the State Motor Vehicle Department (Tr. 332). Before the Grand Jury, however, Evans testified that he loaned the appellant approximately \$200 (Tr. 331).



Association. In response to Krumm's questioning, Stringer claimed to have been with his "boss", Meyer Laurie, the owner of a men's clothing store in Meriden, at the time of the robbery (Tr. 223).<sup>6</sup> When asked whether he knew a young white female named Chris Doolittle, the appellant replied negatively. Upon being shown a photograph of Doolittle, however, he admitted knowing her but claimed to have last seen her on January 6, 1976 (Tr. 223-224). Although he admitted to having invited her to his apartment, he described their relationship as platonic, and claimed not to know her whereabouts (Tr. 225).

The whereabouts of Christine Doolittle remained unknown until September of 1976, almost nine months after the robbery of the Permanent Savings and Loan Association, when she was arrested in San Francisco, California. At the time of her arrest, she admitted her participation in the bank robbery and provided a detailed statement inculcating Ronald Stringer.<sup>7</sup>

In her statement to the FBI, before the Grand Jury, and later at trial, Christine Doolittle related that she

---

<sup>6</sup>At trial Mr. Laurie denied that Stringer was with him (Tr. 41). He also denied that Stringer was ever an employee of his (Tr. 41). He also claimed that the appellant owed him money at the time of the robbery (Tr. 42, 50). At trial the defendant maintained that Mr. Laurie, an obviously respectable 76 year old businessman and gentleman, was lying (Tr. 286). Similarly, the defendant maintained that Agent Krumm was lying (Tr. 295-97), as was the government's chief witness.

<sup>7</sup>This was not the first time that Christine Doolittle had admitted her involvement in the robbery. In a letter written to her mother on July 15, 1976, she detailed her involvement and expressed a fear of returning home. This letter was turned over to the FBI by her mother. The defense objected, successfully, to its admission into evidence (Tr. 145). Additionally, almost immediately after the robbery, Christine Doolittle's handwriting was compared with the demand note, and it was determined that she was the author of Government's Exhibit 4.



first ran away from her Wallingford, Connecticut, home in November of 1975 (Tr. 62). It was during this absence from her family that she met, and began to live with, Ronald Stringer in his apartment on Twiss Street in Meriden (Tr. 62-63). She was fourteen at the time. Stringer was twenty-four (Tr. 65; 277). After approximately two weeks she returned to her parents' home, where she continued to live until early in January of 1976 (Tr. 62-63). On January 3rd, she again ran away from home to live with the appellant at his apartment (Tr. 62).

Doolittle and Stringer first discussed committing a bank robbery on Thursday evening, January 8, 1976 (Tr. 63). The discussion at that time was brief. As they were preparing to go to bed, Stringer asked Doolittle whether she had ever thought about robbing a bank (Tr. 63). Doolittle laughed at Stringer, thinking he was joking (Tr. 63). Stringer, however, informed Doolittle that he had already been to a bank and had "checked out" the location of the surveillance cameras by going in to fill out a loan application (Tr. 64).<sup>\*</sup> There was no further discussion that evening.

The following morning, January 9, 1976, Doolittle and Stringer resumed their conversation about robbing a bank. The appellant reiterated that he knew the location of the surveillance cameras, and which teller window should be approached (Tr. 66). Specifically, Stringer instructed Doolittle that she should go to the *first* teller window since "there is no camera facing the first teller"

---

<sup>\*</sup> This aspect of Doolittle's testimony derived some corroboration from the testimony of William Smajewski, a loan officer at the bank. Although Smajewski was unable to identify Ronald Stringer, he testified that several days before the robbery he had a conversation with a young black male who inquired about a personal loan. Smajewski recalled this incident, since he usually dealt with real estate loans.

(Tr. 71).<sup>9</sup> During the course of this conversation, Doolittle expressed reluctance (Tr. 66). Stringer responded by pointing a gun at her and telling her, in effect, that she had no choice (Tr. 66).

At approximately 11:30 that morning, Christine Doolittle and Ronald Stringer "shot up" with heroin (Tr. 68). This was Christine Doolittle's first, but not her last, experience with heroin (Tr. 105). At about this same time a young, unidentified, black male arrived at Stringer's apartment (Tr. 68). A discussion then ensued in which Stringer, in Doolittle's presence, offered this man \$1,000 "to drive the car" (Tr. 69). Approximately at this same time, the appellant wrote out the words of a demand note, then instructed Doolittle to copy them in her own handwriting on a separate piece of paper (Tr. 70-71). Stringer then left Doolittle in the apartment with the unidentified man, returning a short while later with a toy gun and a sheet, which he instructed her to wrap around the barrel so no one could tell it was a "fake" (Tr. 71-72).

Still under the influence of her first shot of heroin four hours before, Doolittle resisted the appellant's suggestion that she "shoot up" again at approximately 3:00 P.M. (Tr. 73). Stringer nevertheless insisted, and physically pulled her into the kitchen of his apartment where they again used heroin (Tr. 73-74).

Shortly before 4:00 that afternoon, Doolittle, the appellant, and the unidentified man left the apartment.

---

<sup>9</sup> Doolittle's testimony in this regard was corroborated by the testimony of bank Vice-President Joseph Campbell, who testified that of all the teller windows in the bank, the first window, that is, window No. 10, receives the absolute *least* exposure from the surveillance camera (Tr. 25). The fact that window No. 10 was, as Ronald Stringer described it to Christine Doolittle, the "first window" as one enters the bank, was also established by Maureen Reed, the teller from whose presence the money was stolen (Tr. 33).

They entered a dark brown Cadillac with black interior which was operated by the unidentified male (Tr. 74-75).<sup>10</sup> Before proceeding to the bank, the three retraced the escape route which Doolittle was to follow after robbing the bank. While enroute the appellant instructed Doolittle to place the money under a loose board in a large wooden tenement house located on a side street near the bank, then to deposit the gun at still another tenement house located some distance away, and, finally, to walk to a third building and await their return to pick her up after the robbery (Tr. 75-76). Stringer and his companion then left Doolittle off near the Permanent Savings and Loan Association, telling her they would be watching from a nearby shopping center (Tr. 76-77).

Except for the fact that Doolittle, frightened, confused and under the influence of heroin, took the appellant's instructions too literally by attempting to rob the first bank employee she saw, who happened to be a receptionist rather than a teller, the robbery took place smoothly. Doolittle followed the appellant's instructions to the letter, stopping successively at three different houses before she was picked up by Stringer and the unidentified driver of the brown Cadillac.<sup>11</sup> After about 45 minutes

---

<sup>10</sup> This Cadillac should not be confused with the dark green Cadillac purchased by the appellant, in part with bait money, on the following day.

<sup>11</sup> Minnie Skiffington, who resides across the street from the house at which Doolittle deposited the money pursuant to Stringer's instructions, provided additional corroboration for her testimony. Skiffington testified that at the time of the robbery, approximately 4:00 P.M., on January 9, 1976, she saw a young white female walking quickly from the vicinity of the bank toward the house at which the money was dropped off. The girl fit Doolittle's description and wore a black maxicoat. At the sound of sirens, Ms. Skiffington noticed the girl stopped running. Doolittle, who was wearing a black maxicoat (Tr. 78), testified that she recalled seeing a lady (i.e. Ms. Skiffington) standing on a porch watching her as she walked away from the bank (Tr. 82).



the appellant and his companion picked up Christine Doolittle (Tr. 84). Prior to picking her up, Stringer himself retrieved the money, for as soon as she entered the car he displayed to her the bag which she had left at the first tenement house (Tr. 85).

The three then drove directly to the Ramada Inn at East Hartford.<sup>12</sup> At this point the unidentified man drove off, leaving Doolittle and Stringer at the Inn (Tr. 87). After a "celebration" dinner of lobster, the appellant told Doolittle that he planned to use the stolen money to buy a Cadillac and to "invest" in some cocaine (Tr. 92). Later that evening Stringer left the room alone and returned a short while later with a quantity of cocaine, a portion of which he and Doolittle "snorted" that night (Tr. 89).

Stringer awoke before Doolittle the following morning, and left the Inn by himself (Tr. 92). He returned

---

<sup>12</sup> In her statement to the FBI in California at the time of her arrest, Doolittle stated that after the robbery she, Stringer, and the driver of the brown Cadillac drove to a Holiday Inn in either Hartford or East Hartford (Tr. 529-530). Similarly, before the Grand Jury, Doolittle testified that the Holiday Inn was located in East Hartford or Hartford (Tr. 537-538). In actuality, as it was established at trial, immediately after she was picked up, the three of them drove to the Ramada Inn in East Hartford, which is only a short distance from the City of Hartford.

Despite her confusion as to geography, which is not uncommon for one without a driver's license, Doolittle was able to describe the layout of the room, the decor, and the view from the room at which she and Stringer stayed (Tr. 91, 107-109). This is far more than the appellant's alleged alibi witnesses could do. Their testimony on cross-examination, which the government invites the court to read closely, was rife with contradictions, inconsistencies, and fabrications. The jury, it is submitted, was entitled to infer that this testimony was diametrically opposed to the truth.



around noontime with two friends, a black male<sup>13</sup> and black female, neither of whom Doolittle had ever seen before (Tr. 92-93; 96). He displayed to Doolittle a Cadillac which he had just bought that morning at Daniels Cadillac in Hartford (Tr. 92-93). Doolittle correctly described it as a dark green Cadillac with dark interior (Tr. 97).

Christine Doolittle, Ronald Stringer, and their two companions left the Ramada Inn early on the afternoon of January 10, 1976. Doolittle recalled that Stringer neither returned the room key nor paid the bill when they left that afternoon.<sup>14</sup> The four then drove to New Haven where Stringer left Doolittle off at a shopping mall. Later that day, Doolittle eventually went to the Duncan Hotel in New Haven, where she stayed alone for the next few days (Tr. 103; 530-532). Although she did not see Ronald Stringer again until the time of trial, Christine Doolittle received a telephone call from him at the Duncan Hotel the following day (Tr. 530).<sup>15</sup> During this

---

<sup>13</sup> This individual is not the same man who drove the get-away car on the previous day, but another unknown man (Tr. 89).

<sup>14</sup> This aspect of Christine Doolittle's testimony was corroborated by the fact that the hotel bill at the Ramada Inn was not paid until January 16, 1976, *the day after* Ronald Stringer was interviewed by Special Agent Phillip Krumm, and six days after he and Christine Doolittle left the Inn without paying or checking out, exactly as Doolittle had testified (Tr. 441-446).

<sup>15</sup> This aspect of Christine Doolittle's testimony was corroborated by the telephone toll records of the Ramada Inn, Defense Exhibit B, which show that a telephone call was indeed made from the room rented by Ronald Stringer to telephone number 787-1273, the Duncan Hotel, in New Haven on January 11, 1977 (Tr. 447, 522-523). The appellant, of course, claimed to have absolutely no idea who made this call (Tr. 447). Nor did he have any explanation as to how Christine Doolittle *happened* to know (1) that he arrived in the Ramada Inn in a brown Cadillac; (2) that he stayed at a hotel in Hartford or East Hartford

[Footnote continued on following page]

conversation Stringer stated that he could not "come down because he was hot, and that he was calling from a phone booth because the phone was bugged." (Tr. 530).

I.

**The District Court Properly Admitted Into Evidence Government's Exhibit No. 2, A List Of Bait Money Which Was Stolen From The Bank.**

Government's Exhibit No. 2 was properly admitted into evidence by the District Court. That exhibit is a document which lists the denomination, the place of issuance, the series, and the serial number of twenty-two bills designated as "bait money" by the Permanent Savings and Loan Association. The document itself bears the caption of the Permanent Savings and Loan Association, the notation "WINDOW NUMBER 10, \$300.00 BAIT MONEY," and the handwritten name "Maureen" (Tr. 9; Government's Exhibit 2).

Bank Vice-President and Security Officer Joseph Campbell testified at trial that each teller window at the Permanent Savings and Loan Association had a bait money list which the tellers were required to make up (Tr. 4). Each list indicates the number of the teller

---

on Friday night; (3) that he himself bought a Cadillac the following day; (4) that the Cadillac was green; (5) that the Cadillac was bought in Hartford; (6) and that he left the Ramada Inn without paying the bill. Likewise, the appellant had no explanation as to how he happened to have bait money in his possession on the morning after the robbery. Additionally, appellant was "stuck" at trial with the several false and inconsistent statements which he had previously given to the FBI. In short, the evidence against Ronald Stringer was overwhelming. Indeed, it should have been, since he clearly committed the crimes with which he was charged.

window at which the bait money is placed (Tr. 4). Each such list is made and maintained in the ordinary course of banking business (Tr. 9). And each such list is made contemporaneously with the preparation of the bait money package in question (Tr. 10). Moreover, Campbell further testified that whenever a new bait money package is made up for a particular window, the old list is destroyed and a new list is placed in his file of bait money lists (Tr. 18). Thus, Campbell's file at all times contained current bait money lists for all teller stations.

At the time of the robbery, Government Exhibit No. 2 was the only bait money list in Campbell's file for teller window No. 10 (Tr. 18). This document was given by Campbell to the FBI and the Meriden Police Department immediately after the robbery (Tr. 9). Had there been a more recent bait money list for teller window No. 10, Government's Exhibit No. 2 would not have been in existence, as it would have been destroyed in the ordinary course of business and replaced with a new list (Tr. 18). Finally, Exhibit No. 2 was visually recognized by Campbell and expressly identified by him as the list of the bait money at Maureen Reed's teller window (Tr. 9, 20).

Ms. Reed, the nineteen year old bank teller whose life was repeatedly threatened by appellant's co-conspirator and accomplice, also visually recognized and, without objection, identified Government's Exhibit No. 2 as the list of bait money she had in her teller drawer at the time of the robbery (Tr. 32). She further testified that at the time she was first assigned to window No. 10, approximately a month and a half before the robbery, she compared the bait money at this window with the bills described on Government's Exhibit No. 2 (Tr. 32-33). The bait money and the list matched (Tr. 33). Additionally, although she could not recall the name of her fellow employee, (Ms. Reed testified that the accuracy of her comparison of the bait money and Government's Exhibit



No. 2 was verified by a co-worker (Tr. 36).<sup>16</sup> She finally testified that there was no possibility that she inadvertently might have handed out this bait money during a normal transaction prior to the robbery (Tr. 37). In short, there is no legitimate question but that Govern-

---

<sup>16</sup> On page 6 of his brief appellant states that Ms. Reed merely checked "the bait money with Charlotte Dirgin's *original* list." There is no basis whatever for this statement, which creates the misleading impression that there were two different lists and that Charlotte Dirgin had "the original." The pages of the transcript which appellant cites do not support this proposition. To the contrary, those pages support the proposition that Ms. Reed compared the money to Government's Exhibit No. 2, which was right in front of her when she testified. An objective reading of the transcript establishes that this was in fact the case:

"Q. Now, showing you Government's Exhibit No. 2, which is a list, I ask you to look at that.

Do you recognize that list?

A. It was the list of the bait money I had in my drawer at the time.

Q. Now, how long had you been working at Teller Window No. 10, on the date of the robbery?

A. About a month and a half.

Q. When you first came to Teller Window Number 10 did you conduct any kind of a physical inventory of the money that was there?

A. Yes, you check your bait money back to the list, and you also count all the other cash you have in your drawer, and what you might have in the vault.

Q. *Do you know whether you compared the bait money in your drawer against that particular list?*

A. Yes, I did.

Q. And the money which was in your drawer matched—

A. Matched the list. (Emphasis added)." (Tr. 32, line 17 through Tr. 33, line 10).

\* \* \* \* \*

"Q. Where did you get the list in the first place, from Charlotte?

A. Charlotte would hand it out, or Joe Campbell. *Either one of them.* (Emphasis added)." (Tr. 35, lines 20-23).



ment's Exhibit No. 2 is an accurate list of the money which Maureen Reed gave to the bank robber on January 9, 1976 (Tr. 29).

This list, the Government respectfully submits, was properly admitted into evidence as a business record. Rule 803 of the Federal Rules of Evidence reads in pertinent part:

"The following are *not* excluded by the hearsay rule, *even though the declarant is available as a witness*:

\* \* \* \* \*

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstance of preparation indicate lack of trustworthiness...."

A fair reading of the testimony of Joseph Campbell, the custodian of the record in question, establishes that Government Exhibit No. 2 is a record of an event. That event is preparation of a bait money package and its being placed at teller window No. 10 (Tr. 4). The preparation of such a record, as Campbell testified, is contemporaneous with the event (Tr. 10). Although Campbell did not know the name of the particular bank employee who initially prepared this record, or the date on which it was prepared, he did know and, in fact, he

testified: (1) that *tellers*<sup>17</sup> are required to prepare the lists (Tr. 4, 10); (2) that both he and the supervising teller maintain a file of the lists (Tr. 4); (3) that such a record is both made and maintained in the ordinary course of banking business (Tr. 9); (4) that whenever a new bait money list is made up, the old record is destroyed in the ordinary course of business (Tr. 18); and (5) that at the time of the robbery Government's Exhibit No. 2 was the only list of bait money for teller window No. 10 (Tr. 18). Finally, he testified that he provided this record to the FBI and the local police department (Tr. 9).

Maureen Reed, obviously a "qualified witness" within the meaning of Rule 803(6), also testified that she compared the bait money at her teller station with the bills described on Government's Exhibit No. 2; that the bills matched the list (Tr. 32-33); and that she did not hand out any of these bills during ordinary banking transactions (Tr. 37). This testimony, it is submitted, further strengthens Campbell's testimony by establishing that the list in question was indeed trustworthy, for had Ms. Reed detected any discrepancies between the list and the bait money on hand, this would have necessitated the preparation of a new bait money list and the destruction of Government Exhibit No. 2.

---

<sup>17</sup> In view of Campbell's testimony that in the normal course of banking business tellers make up the bait money lists, there is absolutely no basis for appellant's rather sweeping statement at page 5 of his brief that "Campbell could not answer whether the list was made up by 'a person with knowledge' of the bait money in drawer 10." There is quite a difference, it is submitted, between not knowing the name of the particular teller who made up the list and not knowing whether the list was made up by a "person with knowledge." A bank teller most clearly is "a person with knowledge" within the meaning of Rule 803(6), and Campbell twice testified that tellers make up the lists (Tr. 4, 10).

On the basis of all of the foregoing, the District Court properly concluded that Government's Exhibit No. 2 adequately fulfilled each and every criterion for admissibility pursuant to Rule 803(6). The only remaining issue, it is submitted, is whether Government's Exhibit No. 2, *a document which clearly met the requirements for admissibility as a business record*, nevertheless should have been excluded on the grounds that it was a mere "copy."<sup>18</sup>

---

<sup>18</sup> Appellant's reference to Government's Exhibit No. 2 as a mere "copy" is inaccurate legally and factually. An examination of the testimony of Joseph Campbell, and the document itself, establishes that Government's Exhibit No. 2 is not the product of a scrivener like Bartelby or Bob Cratchit, but rather a xerographic *duplicate original*. As the Federal Rules of Evidence, and the commentators recognize:

"In the present day, copying by various photographic and other processes has become commonplace, replacing the carbon for many purposes. Various types of photographic copying, of course, produce facsimilies of an extremely high degree of verisimilitude, and thus might have been expected, as have carbons, to win recognition as *duplicate originals*. In fact, an early judicial step in this direction was taken in a celebrated federal court of appeals decision which held that "recordak" photographs of checks which had been paid, preserved by a bank as part of its regular records were admissible under the Federal Business Records Act. Subsequently, a uniform act was prepared under which photographic copies, regularly kept, of business and public records are admissible without accounting for the original. This act has been widely adopted." McCormick, *Evidence* § 236 (1972 ed.) (Emphasis added, footnotes omitted).

Also see Title 28, United States Code, section 1732(b) and *United States v. Manton*, 107 F.2d 834, 844 (2d Cir. 1938). Moreover, it should be emphasized that Government's Exhibit No. 2 was *not* produced in anticipation of litigation, but was *itself* made and maintained in the ordinary course of business by a *non-party* to the present action. See, e.g., *Toho Bussan Kaisha, Ltd. v. American President Lines, Ltd.*, 265 F.2d 418, 422-423 (2d Cir. 1959) (Lumbard, J.) (commenting on the importance of the foregoing distinctions).



The government respectfully maintains that it most clearly should not have been excluded on this basis either.

Rule 1003 of the Federal Rules of Evidence provides that a "duplicate"<sup>19</sup> is fully admissible into evidence unless "(a) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." A fair reading of the transcript of the proceedings in the District Court indicates that the appellant not only failed at any time to raise before Judge Clarie the arguments he now makes on appeal, but that he never attempted to raise, much less succeeded in raising, either a "genuine question" of authenticity or a claim of "unfairness."

At no point prior to the admission of Government's Exhibit No. 2 (Tr. 20), did the appellant attack the authenticity of that document or the "original" which he now claims, for the very first time on appeal, "may" have been "interlineated." Instead, during his extensive voir dire, appellant sought merely to establish that Campbell did not know the *name* of the particular teller who prepared the list or the *date* on which it was prepared (Tr. 10-20). In short, appellant never interposed an objection pursuant to Rule 1003 of the Federal Rules of Evidence, but attempted to block its admission under Rule 803(6) exclusively. This failure, the government submits, should

---

<sup>19</sup> Rule 1001 of the Federal Rules of Evidence sets forth the legal definition of the term "duplicate." It provides in pertinent part:

"A 'duplicate' is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original."

Also see Title 28, United States Code, section 1732(b).



be held effectively to preclude the appellant from complaining on appeal that Government's Exhibit No. 2 was not an "original" document, but merely a "copy." As Judge Weinstein has commented

"When the opposing party concedes its accuracy or does not object pursuant to Rule 1003, the duplicate must be admitted unless the court has strong reason to believe that the parties are conspiring to commit a fraud on the court. Even when accuracy is not conceded, the court should require persuasive reasons for rejecting duplicates which should be routinely accepted as a convenience to the court and the parties. A specific objection indicating why the original is needed should be required." 5 Weinstein, *Evidence* ¶ 1003[01] (Footnotes omitted).

Also see *United States v. Kushner*, 135 F.2d 668, 674 (2d Cir.) (Clark, J.), *cert. denied*, 320 U.S. 212, *reh. denied*, 320 U.S. 808 (1943). *Cf. United States v. Rivera*, 513 F.2d 519, 525 (2d Cir.) (Friendly, J.), *cert. denied*, 423 U.S. 948 (1975).

Moreover, even if the appellant's failure to interpose an objection pursuant to Rule 1003 could be overlooked, it is clear that the reasons offered, both on appeal and in the District Court, in opposition to the admission of Government's Exhibit No. 2 fail to satisfy either the "genuine question" test or the "unfairness" test of Rule 1003. Those tests require much more than mere *speculation* that the original "may have been different" or that it "could have been changed by deletions on interlineations." (Appellant's Brief at 6). In order to satisfy the "unfairness" test of Rule 1003, an opposing party must establish "a *substantial likelihood* that it would be prejudicial to admit the duplicate. . . ." 5 Weinstein, *Evidence* ¶ 1003[01] (emphasis added). Similarly, in order to

satisfy the "genuine question" test an opponent must also do more than hypothesize. As Judge Weinstein has observed, "Under Rule 1003 the mere supposition that the original *may* have been altered should not prevent introduction of the duplicate without some indication that the original *was* altered." 5 Weinstein, *Evidence* ¶ 1003[02] (emphasis original in part). Nothing said by the appellant in the District Court *prior* to the admission of Government's Exhibit No. 2 was addressed to either of the foregoing tests, and at no time has either test been satisfied.

Finally, and alternatively, the government submits that, to the extent appellant may be *assumed* properly to have voiced a Rule 1003 objection in the District Court, Judge Clarie acted well within his discretion in determining that there was no "unfairness" or "genuine question" which would have barred the admission of Government's Exhibit No. 2 under Rule 1003. See Rules 1008 and 104, Federal Rules of Evidence. Also see 5 Weinstein, *Evidence* ¶ 1003[01] (noting that Rule 1008 vests trial courts with broad discretion in determining preliminary factual issues under Rule 1003). That determination was neither "clearly erroneous" nor an abuse of discretion. It should not therefore be overturned.

## II.

**The District Court's Instruction On "Force, Violence, And Intimidation" Operated In The Defendant's Benefit, Was Fully Supported By The Evidence, And Did Not Constitute Reversible Error.**

Count One of the indictment charged that:

"On or about the 9th day of January, 1976, in the District of Connecticut, Ronald Adrian Stringer,

the defendant herein, *by intimidation*, willfully and unlawfully did take from the person and presence of another, the approximate sum of \$4,475, in money, belonging to and in the care, custody, control, management and possession of the Permanent Savings & Loan Association, 61 Colony Street, Meriden, Connecticut, the deposits of which were then insured by the Federal Savings & Loan Insurance Company, in violation of Title 18, United States Code, Sections 2113(a) and 2." (Emphasis added).

At trial Maureen Reed, the bank teller from whose person and presence the money was taken, testified that she was handed a demand note which threatened to "blow [her] head off" (Tr. 29); that she was repeatedly told by Stringer's accomplice "to hurry up or she'd kill me" (Tr. 30); and that she was afraid for her life (Tr. 30). Additionally, Ms. Reed testified that the robber was holding a silver-colored gun, which appeared to be real (Tr. 30), and which was pointed at various times at her neck (Tr. 29) and her head (Tr. 38). This evidence, the government submits and the appellant appears to concede, is clearly sufficient to establish "intimidation," as charged in the indictment (Appellant's Brief at 8, ¶ 2).<sup>20</sup> See e.g., *United States v. Robinson*, 527 F.2d 1170 (6th Cir. 1975) and *United States v. Epps*, 438 F.2d 1192, 1193 (4th Cir. 1971) (both finding "intimidation" in *unarmed* bank robberies).

<sup>20</sup> Appellant states at p. 8, § 2:

"In the present case, there was evidence of intimidation based on the teller's reading a threatening demand note given to her by the bank robber, the use of an apparently real gun by Doolittle, and the teller's conclusory testimony of fright (App. 69-70). In light of these circumstances, the jury may have concluded that Maureen Reed and other bank personnel were put in fear or intimidation."

This is an understatement.



The appellant argues, however, that his conviction should be reversed because the District Court "unnecessarily" and improperly instructed the jury on "force and violence" as well as "intimidation." The argument, according to the appellant, is that because of Judge Clarie's reference to "force and violence" the jury "may well have based its verdict of guilty on those words and not on a finding of intimidation" (Appellant's brief at 9-10). The government respectfully submits that this argument lacks merit.

An examination of Judge Clarie's charge to the jury indicates that he did in fact refer to "force and violence" as well as "intimidation." However, the manner in which he did so makes it abundantly clear that the jury did, in fact, find "intimidation." The District Court charged as follows:

"Now, there are four essential elements *required to be proven* in order to establish the offense charged in the first count.

First, that *force and intimidation* was used by the defendant, Ronald Adrian Stringer, in the commission of the robbery; . . ." (Tr. 550)

The District Court, in short, *conjoined* force and intimidation. Thus the jury could not have returned a guilty verdict unless they had found that *both* had occurred. While the precise wording of the statute and the indictment made it technically unnecessary to instruct on anything other than intimidation, the net effect of the charge was to *increase* the government's burden of proof by requiring that the jury find *something more* than simple intimidation. This worked to the appellant's *benefit*, not his detriment.

Apart from this, there are other reasons why appellant's contentions should be rejected. First of all, there



was an adequate factual basis from which the jury could have found "force" as well as "intimidation." Contrary to appellant's suggestion, the government submits that actual physical contact or bodily injury is unnecessary for a finding of "force" or "violence." Further, the government maintains that the terms are not, as appellant suggests, mutually exclusive, but that intimidation is, or at least should be held to be, presumptively present *wherever* force or violence is demonstrated. See Black's Law Dictionary. Here, Maureen Reed, like the victim bank tellers in *Robinson, supra*, and *Epps, supra*, was sufficiently *intimidated* by Christine Doolittle's demand note. But this is not all that occurred. In addition, Doolittle brandished in her "trembling" hands an apparently real pistol which was pointed at Maureen Reed's *head*. (Tr. 37). She also *repeatedly* threatened Ms. Reed with death. This, the government contends, was clearly an unlawful display of force and violence. And Maureen Reed's reaction to it was not, as the appellant derisively describes, "irrational."

Secondly, when read in its entirety, as the Court specifically instructed the jury to consider it (Tr. 543), the charge clearly, fairly, and accurately set forth the essential elements of the offense and the appropriate law. Indeed, except for his critical reference to Judge Clarie's mention of "force and violence," the appellant does not appear to contend otherwise.

Finally, there is no basis for appellant's claim that the Court "further exacerbated the problem by failing to advise . . . counsel prior to a summation of its proposed instructions." Appellant never requested any special instruction on "intimidation." With respect to the special instructions which were requested, an examination of Judge Clarie's charge indicates that, in substance, they were given.

## III.

**The District Court's Instruction On "Aiding And Abetting" Which Included A Reading Of The Statute And A Clear Explanation Of Its Terms, Was Proper And Did Not Constitute Reversible Error.**

There was overwhelming unchallenged evidence at trial that the Permanent Savings and Loan Association was robbed, and that Christine Doolittle did it. The defense conceded as much during its summation. Its theory was simply that Ronald Stringer had nothing to do with that robbery, and that Christine Doolittle was lying due to unrequited love and a desire to ingratiate herself with the law. Appellant now argues that his conviction should be reversed because the District Court declined to charge *in haec verba* that "the jury must find a principal actually existed and committed the other elements of bank robbery."

The short answer to appellant's argument is that Judge Clarie's instruction on aiding and abetting was legally correct and totally adequate under the circumstances. Not only did the District Court *read* to the jury Title 18, United States Code, section 2, in its entirety, but it also explained that in order to convict under that section the jury must find *wilful* participation in the criminal venture and a *specific intent* to commit the crime charged (Tr. 555-556). In identical or similar cases other courts have held this to be sufficient. *See, e.g., Walker v. United States*, 342 F.2d 22, 25 (5th Cir.), *cert. denied*, 382 U.S. 859 (1965) (reading of statute and general explanation sufficient); *United States v. McCoy*, 539 F.2d 1050, 1064 (5th Cir. 1976) (reading of statute sufficient); *United States v. Inciso*, 292 F.2d 374, 381 (7th Cir.), *cert. denied*, 368 U.S. 920 (1961) (jury informed of the provisions of statute). On the basis of the

foregoing, and a reading of the District Court's charge as a whole, see *United States v. Miley*, 513 F.2d 1191, 1209, n. 14 (2d Cir.), *cert. denied*, 423 U.S. 842 (1975), the government submits that the aiding and abetting instructions were fully adequate.

#### IV.

#### **The District Court Did Not Commit An Abuse Of Discretion In Refusing To Prohibit The Government From Using Appellant's 1971 Heroin Distribution Conviction For Impeachment Purposes.**

Ronald Adrian Stringer was convicted of larceny in Connecticut Circuit Court on January 1, 1971. He was convicted of larceny again in Connecticut Circuit Court on January 22, 1971. Additionally, he was convicted of the sale and possession of heroin on July 1, 1971 in Connecticut Superior Court at New Haven. He now seeks to overturn his bank robbery and conspiracy convictions, which are fully and fairly supported by the evidence, on the grounds that the District Court abused its discretion in refusing to prohibit the government from using his narcotics conviction for impeachment purposes. The government respectfully submits that Judge Clarie did not commit an abuse of discretion, and that appellant's claim to the contrary should be rejected.

#### **A. The balancing test of Rule 609(a)(1) vests wide discretion in the trial court and contemplates consideration of many variables**

Rule 609(a)<sup>21</sup> of the Federal Rules of Evidence strikes a balance between the traditional view that *any*

---

<sup>21</sup> Rule 609(a) of the Federal Rules of Evidence provides in pertinent part:

"For the purpose of attacking the credibility of a witness,  
[Footnote continued on following page]



prior felony conviction could be used for impeachment purposes and the approach set forth in *United States v. Luck*, 348 F.2d 763 (D.C. Cir. 1965), that only convictions involving dishonesty or false statements could be utilized. Accordingly, impeachment on the basis of a prior felony conviction is permissible under Rule 609(a) (1) if "the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant." By its terms, therefore, the Rule authorizes the trial court to exercise its discretion in determining whether, in the context of a particular case, the truth-seeking process would be advanced by either prohibiting or permitting the use of a particular conviction for impeachment purposes. This requires consideration of many variables.

"The statute, in our view, leaves room for the operation of a sound judicial discretion to play upon the circumstances as they unfold in a particular case. There may well be cases where the trial judge might think that the cause of truth would be helped more by letting the jury hear the defendant's story than by the defendant's foregoing that opportunity because of the fear of prejudice founded upon a prior conviction. There may well be other cases where the trial judge believes the prejudicial effect of impeachment far outweighs the probative relevance of the prior conviction to the issue of credibility. This last is, of

---

evidence that he has been convicted of a crime shall be admitted if elicited from him or established by public record during cross-examination but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant."

course, a standard which trial judges apply every day in other contexts; and we think it has both utility and applicability in this field.

In exercising discretion in this respect, a number of factors might be relevant, such as the nature of the prior crimes, the length of the criminal record, the age and circumstances of the defendant, and, above all, the extent to which it is more important to the search for truth in a particular case for the jury to hear the defendant's story than to know of a prior conviction. The goal of a criminal trial is the disposition of the charge in accordance with the truth. The possibility of a rehearsal of the defendant's criminal record in a given case, especially if it means that the jury will be left without one version of the truth, may or may not contribute to that objective. The experienced trial judge has a sensitivity in this regard." 3 Weinstein, *Evidence* ¶ 609 [03].

Frequently this balancing process "involves intangibles for which an appellate court's feel is nebulous at best." *Brooke v. United States*, 385 F.2d 279, 286 (D.C. Cir. 1967).

Rule 609(a), in short, "gives broad discretion to the trial judge and its exercise should not be disturbed absent a clear showing of abuse." *United States v. Ortiz*, — F.2d — (2d Cir. 1977), *slip op.* at 2792, Docket No. 76-1460 (April 11, 1977). *Cf. United States v. Palumbo*, 401 F.2d 270 (2d Cir. 1968) and *United States v. Puco*, 453 F.2d 539 (2d Cir. 1971) (recognizing, as does *Ortiz*, that even in the context of a narcotics trial—where the potential for prejudice is arguably the highest—the District Court's discretion has sufficient breadth to permit the use of a narcotics conviction for impeachment pur-

poses). Where, as here, the crime for which the defendant is on trial is *not* a narcotics charge, it follows that the trial court's discretion is at least equally as broad. Also see *United States v. Leroy Hayes*, — F.2d — (2d Cir. 1977), *slip op.*, Docket No. 76-1508 (April 21, 1977).

**B. Under the circumstances of the present case the District Court cannot, and should not, be held to have abused its discretion**

In *United States v. Hawley*, — F.2d — (2d Cir. 1977), *slip op.* at 3245-3246, n.5, Docket No. 76-1469 (April 27, 1977), this Court enumerated several factors to be considered by the trial Court in determining whether to admit or exclude impeachment evidence pursuant to Rule 609(a). They are: (1) the nature of the crime; (2) the time of the conviction; 3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. *Also see* 3 Weinstein, *Evidence* ¶ 609[03]. On November 29, 1976, a hearing was held on numerous defense motions, including appellant's motion to exclude his prior narcotics conviction. At that time the District Court specifically considered several of these factors, ultimately concluding after oral argument that appellant's motion should be denied.

Judge Clarie gave due consideration to the nature of the crime which appellant sought to exclude. The Court observed that the crime involved the possession and sale of heroin and that, as a result of his conviction of that crime, the appellant received a five year sentence in the Superior Court of New Haven County. This sentence, a rather severe punishment, provides some indication of the seriousness of that offense and was, it is respectfully submitted, an additional factor which Judge Clarie was



entitled to take into consideration in exercising his discretion. This is especially so in view of the fact that the instant offense occurred within that five year period.<sup>22</sup>

During the course of the hearing the District Court also made specific reference to the fact that this was a bank robbery trial. Although the Court did not state *in haec verba* that "bank robberies are not similar to narcotics cases," it is clear from the context of the Court's remarks that it considered the dissimilarity of the charges to be significant. Although later on at trial Christine Doolittle testified that she had committed the robbery while under the influence of heroin, and that after the robbery Stringer had used a part of their ill-gotten gains to "invest" in cocaine, as he had stated he would, this did not, it is submitted, transform the present case into a drug trial. At most, the fact that drugs were tangentially involved constituted an additional element to be considered in determining the balance between probative value and prejudicial effect.<sup>23</sup> Cf. *United States v. Ortiz*, *supra*.

---

<sup>22</sup> The actual sentence imposed by the Connecticut Superior Court was "five to *ten* years on Count One, execution suspended, and an indeterminate sentence of up to five years on the second count. . . ." See Appellant's Motion for Reduction of Bail, ¶ 14. Thus, the narcotics charges of which appellant was convicted were even more serious than believed at the time of the hearing.

<sup>23</sup> The government elicited the fact that Doolittle was under the influence of heroin because it was relevant to explain: her inability to recall numerous details, and her inability to make a positive identification of Stringer's male accomplice (the driver of the brown Cadillac). The fact that Stringer left the Ramada Inn that evening and returned with cocaine for himself and Doolittle was elicited for similar reasons, and to establish that Stringer left the room that evening, spent some of the money, had an opportunity both to call George Evans, Jr., and to "stash" the remaining money. Moreover, since Stringer had stated that he was going to use the money to "invest" in cocaine and to pur-

[Footnote continued on following page]

Appellant's contention that "the jury may have convicted Stringer on a firm belief in his narcotics involvement and not . . . that he aided the robbery of a bank" (Appellant's Brief at 16) is, and the government respectfully urges this Court to find, totally baseless. Besides importing absolutely no intelligence, fairness, or sophistication to the jury, appellant's claim overlooks several facts. Chiefly, it overlooks the fact that the appellant had an "alibi" to which he, his wife, his brother, and his cousin (who, incidentally, drives a brown Cadillac (Tr. 487)) testified under oath.<sup>24</sup> The appellant could not have been convicted if any portion of this alibi had been

---

chase a Cadillac, the information was elicited to establish that he acted in conformity with his declaration. In addition to all of the foregoing, the testimony was relevant to explain why a 14 year old eighth grader would do such a thing, and most importantly, to shed light on the credibility issue which existed between the appellant and Christine Doolittle.

<sup>24</sup> No notice of alibi was filed by the defense. Consequently, the government was unaware of the identity of the defense witnesses and, importantly, of the existence of their criminal records. During its direct examination of these witnesses the defense did not elicit their criminal records, and the government was unaware of any at the time of its *initial* cross-examination. Overnight, however, additional investigation was undertaken and the witnesses were then recalled by the prosecution on rebuttal. It was established at that time that, besides being the owner of a dark brown Cadillac, appellant's cousin was a convicted burglar (Tr. 501). It was also established that his brother was a convicted felon (Tr. 520-521). Appellant's wife, it was developed, not only was unable to describe even vaguely the interior of the room at which she and her husband supposedly stayed on the evening of the robbery, but placed the East Hartford Ramada Inn several miles away, in West Hartford (Tr. 391, 407). Additionally, the phenomenal "memory" which appellant's wife displayed during the defense's questioning vanished during the government's cross-examination. In twenty-two pages of testimony she stated on nearly forty occasions that she could not "remember" or "did not know." (See Tr. 387-409).

believed. Thus the jury's verdict stands as a monument commemorating not simply their rejection of appellant's testimony, but that of all his "alibi" witnesses as well. The jury, in sum, found that they had perjured themselves. It is illogical to suggest that the appellant's testimony was rejected on any other basis. Appellant, in short, was convicted not because he was impeached on the basis of a drug conviction, but because the jury disbelieved him just as it disbelieved his alibi witnesses.<sup>25</sup>

On the basis of the several motions, and the entire file, before him at the hearing, Judge Clarie, a highly competent and experienced trial judge, *United States v. Housand*, — F.2d — (2d Cir. 1977), *slip op.* at 2003-2004, Docket No. 76-1156 (February 25, 1977), also undoubtedly perceived that, despite the compelling circumstantial evidence which the Government possessed, the jury's perspective on that evidence would depend on the resolution of a credibility contest between "the Ronald Stringer faction" and his accomplice, a 14 year old girl with a subsequent history of prostitution and drug abuse. The trial Court was also aware that this history would be, as it was, exploited at trial by the defense in order to impeach Christine Doolittle in every way possible. Under these circumstances, it is respectfully submitted, the Court was well within its discretion in permitting the Government to elicit, and the jury to hear with appropriate limiting instructions, every *shred* of evidence which Judge Clarie felt would assist them in their search for truth. To have done otherwise would have falsely, and

---

<sup>25</sup> Appellant's claim of prejudice is further undercut by the fact that the prosecution did not dwell on his prior record in either its summation or when initially eliciting it (Tr. 307-308). Additionally, the Court clearly and adequately instructed the jury on the use of prior convictions for impeachment purposes (Tr. 567-570).



unjustifiably made Ronald Stringer appear "pristine" by comparison to Doolittle. Cf. *United States v. Jackson*, 405 F. Supp. 938 (E.D.N.Y. 1975); *United States v. Reddington*, 433 F.2d 997 (4th Cir. 1970). This, truly, would have been a miscarriage of justice. See *Gordon v. United States*, 383 F.2d 936, 941 (D.C. Cir. 1967), *cert. denied*, 390 U.S. 1029 (1968) (holding that in credibility contests between—the accused and the accuser—there are "greater, not less, compelling reasons, for exploring *all avenues which would shed light* on which of the two witnesses [is] to be believed.").

The importance of a defendant's testimony is an additional factor to be evaluated, both by the trial Court and on review, in determining the direction in which the balance between prejudicial effect and probative value tips. In those situations where the possibility of impeachment causes a defendant actually to forebear exercising his right to testify "prejudicial effect" weighs more heavily, for the jury may in such case be deprived of the defendant's entire version of the offense. But this did not happen in the present case. Here the defendant, and an entire battery of defense witnesses, took the stand. The jury rejected their testimony, inferring undoubtedly that it was diametrically opposed to the truth. Hence the appellant cannot, and should not be, heard to complain that the trial Court's ruling precluded him from testifying.

Although Judge Clarie did not explicitly indicate that he was weighing each of the foregoing factors, it is clear that he did consider them, and adequately articulated the reasons for his ruling. See *United States v. Hawley*, *supra*, slip. op. at 3245-3246 (noting that since all of the factors were before the trial Judge at the time he admitted the evidence, the Court's characterization of the prior conviction as "recent" and "not trivial" was suf-

ficient articulation); and *United States v. Leroy Hayes*, *supra*, *slip op.* at 3130 (noting that, while the Court could have been more specific in identifying and weighing the relevant indicia, it cannot be said that its discretion was abused). On the basis of all of the foregoing, the Government maintains that Judge Clarie should not be held to have committed an abuse of discretion.

### CONCLUSION

**The judgment of the District Court is sound and, on the basis of all the foregoing arguments, it should be affirmed.**

Respectfully submitted,

PETER C. DORSEY  
*United States Attorney*  
*for the District of Connecticut*  
P. O. Box 1824  
270 Orange Street  
New Haven, Connecticut 06508

THOMAS P. SMITH  
*Assistant United States Attorney*  
*for the District of Connecticut*





**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

No. 77-1104

U S A,  
APPELLEE

vs.

RONALD A. STRINGER,  
APPELLANT

**AFFIDAVIT OF SERVICE BY MAIL**

Albert Sensale, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 914 Brooklyn Avenue,  
Brooklyn, New York

That on the 23rd day of May, 1977, deponent served the within Brief  
upon Richard S. Cramer, Esq., Assistant Federal Public Defender, 450 Main Street,  
Hartford, Conn. 06103

Attorney(s) for the Appellant in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

Sworn to before me,

*Albert Sensale*

This 23rd day of May 197 7

*Edward A. Quimby*  
EDWARD A. QUIMBY  
Notary Public, State of New York  
No. 24-3183500  
Qualified in Kings County  
Commission Expires March 30, 1979